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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 EVERETT HOGGE and PRISCILLA
12 HOGGE,

13 Plaintiffs,

14 vs.

15 A.W. CHESTERTON COMPANY, *et al*,

16 Defendants.

) Case No.: C07 2873 MJJ

)
) **DECLARATION OF STEPHEN J. HEALY**
) **IN SUPPORT OF PLAINTIFFS' MOTION**
) **FOR COSTS AND EXPENSES**
) **INCURRED AS A RESULT OF**
) **REMOVAL**

) [28 U.S.C. § 1447(c); ND CA Local Rules 7-2 & 7-8]

)
) Hearing Date: July 24, 2007
) Time: 9:30 a.m.
) Courtroom: 11, 19th Floor
) Judge: Hon. Martin J. Jenkins

19
20 I, STEPHEN J. HEALY, declare as follows:

21 1. I am an attorney admitted to practice law before this Court and all the courts of
22 the State of California and am an associate of PAUL, HANLEY & HARLEY, LLP, attorneys of
23 record for plaintiff herein. The matters stated herein are true to my own personal knowledge,
24 except as otherwise stated. If called upon as a witness, I could and would testify to the following
25 facts.

26 2. I was admitted to practice law in 1988. My professional practice since that time
27 has involved primarily litigation and trials of personal injury, real estate and criminal cases in the

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1 States of California and Nevada, and since 1999, my practice has been almost exclusively
2 devoted to personal injury civil litigation and personal injury civil trial practice. I am now or
3 have been admitted to practice law before the United States Court of Appeals, the Ninth Circuit;
4 the United States District Courts of California, Northern District, Central District and Eastern
5 District; and I was actively admitted to the practice before all the Courts of the State of Nevada
6 from 1988 to 2006 (currently inactive) and of the United States District Court, District of Nevada
7 (1990 to 2006; currently inactive). I have tried over thirty (30) jury trials to verdict in the States
8 of California, Nevada and Oregon, achieving over \$20,000,000.00 in verdicts on behalf of my
9 clients in injury and damages cases.

10 3. On May 7, 2007, trial in this case commenced in Department 611 of the San
11 Francisco Superior Court before Honorable Diane E. Wick. I attended as the trial attorney
12 handling this case on behalf of plaintiffs. The case proceeded through motions in limine and jury
13 selection. On May 16, 2007, the judge handed counsel a trial schedule. According to this
14 schedule, plaintiffs would present their case the week of May 21, 2007; the courtroom would be
15 dark the week of May 28, 2007; the plaintiffs would resume presentation of their case on
16 Monday, June 4, 2007, and conclude their case on Monday June 11, 2007; JOHN CRANE would
17 present its defense beginning on June 12, 2007, and continuing through Monday, June 18, 2007;
18 the following day the parties would give closing arguments and the judge would give jury
19 instructions; and on June 20, 2007, jury deliberations would begin. The jury was time-qualified
20 to sit through June 22, 2007. In accordance with this schedule, a jury was impaneled, the parties
21 made their opening statements, and I began presenting witnesses and evidence in the plaintiffs'
22 case-in-chief. The jury trial proceeded as planned through Friday, May 25, 2007. The
23 courtroom was dark the week of May 28, 2007, through June 1, 2007, and the receipt of evidence
24 was scheduled to resume on Monday, June 4, 2007, with plaintiffs' presentation of expert
25 witnesses.

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1 4. On the afternoon of Friday, June 1, 2007, JOHN CRANE INC. served my office
2 with a copy of the Notice of Removal that JOHN CRANE had filed in the U.S. District Court for
3 the Northern District of California earlier that day. Prior to service of the removal petition,
4 neither JOHN CRANE nor its counsel gave any indication of its intent to petition for removal
5 other than casual mention of same by Robert Nelder, trial counsel for JOHN CRANE, in
6 connection with a phone call that I had placed with him regarding a matter completely unrelated
7 to the Notice of Removal. That phone call took place after 3:00 p.m., on Friday, June 1, 2007.
8 None of JOHN CRANE's counsel ever asked me whether any other defendants remained in the
9 action. Upon information and belief, none of JOHN CRANE's counsel ever asked any of
10 plaintiffs' counsel for this information. Indeed, counsel for JOHN CRANE failed to explain to
11 me what event transpired that supported its removal of the action on Friday, June 1, 2007,
12 although in subsequent conversations it was discussed that the one-year statutory limit for
13 removal would expire on June 2, 2007. Moreover, as of June 1, 2007, no Judicial Council form
14 Notice of Settlement, no California Rule of Court 3.1385 Notice of Settlement, and no Request
15 for Dismissal has been offered or provided for HILL BROTHERS CHEMICAL COMPANY,
16 PLANT INSULATION COMPANY, QUINTEC INDUSTRIES, INC., SEPSCO
17 CORPORATION, or HOPEMAN BROTHERS, INC.

18 5. On Monday, June 4, 2007, at approximately 8:30 a.m., I appeared in Department
19 611 of the San Francisco Superior Court to inform the Court that defendant had removed the case
20 of *Everett Hogge and Priscilla Hogge v. A.W. Chesterton Co., et. al.*, San Francisco Superior
21 Court Case No. 452846, to federal court, but plaintiffs intended to move for remand that day
22 because the federal court lacked subject matter jurisdiction over the case. I pointed out that MR.
23 HOGGE was unlikely to survive through the conclusion of another trial at a future time if this
24 jury were released and plaintiffs were forced to start trial again from the beginning, with a
25 different judge and/or jury. Judge Wick stated that since the jury was time-qualified to sit until
26 June 22, 2007, we were ordered to reappear in her courtroom on the morning of Monday, June
27 11, 2007, at 8:30 a.m., and provide her with a status report. She indicated that if the case were

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1 not remanded as of that time, she would have no choice but to excuse the jury, since the case
2 could not complete by June 22, 2007, otherwise. She suggested that, as a practical matter, if the
3 case were not remanded by Friday, June 8, 2007, she would dismiss and excuse the jury on
4 Monday, June 11, 2007, at 8:30 a.m. Judge Wick requested timely status reports on the progress
5 of the proceedings in the federal court and also asked for a potential witness schedule for the
6 week of June 11, 2007, should the case be remanded.

7 6. After leaving Judge Wick's courtroom, I learned from my colleague Deborah
8 Rosenthal that the federal case had been assigned to Magistrate Judge Elizabeth LaPorte. (The
9 papers that defendant served us with on Friday did not have a case number or judge's initials on
10 them.) I went to the federal courthouse to speak with Judge LaPorte's clerk and learned that
11 Judge LaPorte's courtroom was dark Tuesday and Thursday, she would be sitting on Friday June
12 8, 2007, and then her courtroom would be dark for the two weeks following because she was
13 going on vacation.

14 7. Given Everett Hogge's exigent health circumstances, Judge Wick's directive
15 regarding the jury, and Judge LaPorte's schedule, between June 4 and June 6, 2007, I engaged in
16 further meet and confer discussions with counsel for JOHN CRANE, and with other plaintiffs'
17 counsel in my office; determined who was serving as duty judge at the U.S. District Court; and
18 prepared a Request for Intervention of the General Duty Judge, asking for reassignment to the
19 duty judge and for an expedited briefing and hearing schedule that would allow for a ruling on
20 plaintiffs' Motion for Remand before 8:30 a.m., Monday, June 11, 2007, the date and time at
21 which Judge Wick indicated she would excuse and dismiss the jury.

22 8. I spent approximately 2.5 hours appearing before Judge Wick, and subsequently
23 emailing Judge Wick and defense counsel, to discuss the removal and remand and revised
24 witness schedule made necessary by the removal.

25 9. I spent approximately 1.2 hours traveling to and visiting the federal courthouse
26 and meeting and conferring in person and by telephone with clerks at the federal courthouse with
27 regard to the various judges' schedules.

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